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FISCAL IMPACT STATEMENT

LS 6399

BILL NUMBER: SB 49

NOTE PREPARED: May 4, 2005

BILL AMENDED: Apr 28, 2005

SUBJECT: Various Computer Issues.

FIRST AUTHOR: Sen. Ford

FIRST SPONSOR: Rep. Koch

BILL STATUS: Enrolled

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill prohibits certain uses of spyware. It authorizes a provider of computer software, a web site owner, or a trademark or copyright holder harmed by a prohibited use of spyware to bring a civil action against the person who committed the prohibited act. The bill allows a person who brings a cause of action for unlawful spyware installation to receive injunctive relief and the greater of actual damages or \$100,000 per violation. The bill also provides that a person may be convicted of an offense if the person's conduct constitutes an offense under Indiana law and either: (1) involves the use of the Internet or another computer network, and access to the Internet or other computer network occurs in Indiana; or (2) involves the use of electronic communication, including the Internet or another computer network, outside Indiana and the victim of the conduct resides in Indiana at the time of the conduct. The bill provides that a trial for such conduct may be held in a county: (1) from which or to which access to the Internet or other computer network was made; (2) in which any computer, computer data, computer software, or computer network that was used to access the Internet or other computer network is located; or (3) in which the victim resides at the time of the conduct if the conduct involves the use of electronic communication and occurs outside Indiana.

Effective Date: July 1, 2005.

Explanation of State Expenditures: *Jurisdiction and Venue of Computer Crimes:* There are no data to indicate how many more people may be tried in Indiana as a result of granting jurisdiction for an offense that occurs over the Internet or another computer network, nor is there information to indicate the penalties for which offenders may be sentenced.

However, if additional offenders are sentenced to a term of incarceration in Indiana, costs for housing offenders

could increase. The average expenditure to house an adult offender was \$21,514 in FY 2004. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Explanation of State Revenues: *Computer Spyware:* By creating a specific civil action for harms brought about by spyware, it is estimated that this bill will increase the number of actions filed.

Court Fee Revenue: If additional civil actions occur, revenue to the state General Fund may increase if court fees are collected. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Jurisdiction and Venue of Computer Crimes: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a felony is \$10,000, and for a misdemeanor, the maximum fee varies by class from \$500 to \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: *Jurisdiction and Venue of Computer Crimes:* If more defendants are detained in county jails prior to their court hearings or incarcerated in local facilities for misdemeanor convictions, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Computer Spyware/Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

Jurisdiction and Venue of Computer Crimes: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected:

Local Agencies Affected: Trial courts, local law enforcement agencies; city and town courts.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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